Assessment Year 1989-90

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No. 16 of 2003

The Commissioner of Income Tax,
Dehradun and another ..... Appellants

Versus

Reading & Bates Exploration Co.,
C/o Arthur Anderson & Co.,
426, World Trade Centre,
Barakhamba Lane, New Delhi ..... Respondent

Mr. S.K. Posti, learned counsel for the Tax Department.
Ms. Krishi Shukla, learned counsel for the respondent.

Date: 20.7.2004

Hon'ble P.C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

1. This is an appeal under section 260A of the Income Tax Act, 1961 filed by the Revenue against the judgment and order dated 06.09.2001 passed by the Income Tax Appellate Tribunal, New Delhi in I.T.A. No. 7145/Del/1994.

2. Respondent is a non-resident foreign company nemely, Reading and Bates Exploration Company which, in the year under consideration, executed contracts in India. During the Year under consideration, respondent derived income from the contracts executed in India.

3. The question raised before us is as follows:-

QUESTION:

> Whether, on facts and in the circumstances of the case, the Ld. ITAT was not legally justified in directing the A.O. to charge interest u/s 234B of the I.T. Act on the tax on total income declared in the return, whereas this

interest is chargeable on assessed tax as defined by Explanation I below section 234-B which also stands amended by the Finance Act, 2001 with retrospective effect from 01.04.1989?"

4. Heard learned counsel for the parties and perused the record.

5. As this Court has discussed in Income Tax Act Appeal No. 57 of 2002; The Commissioner of Income Tax, Dehradun & another V/s SEDCO Forex International Drilling Co. Ltd. dicided on 9th of Oct 2003 the reasoning regarding aforesaid question is given in the following paragraph:

6. The reasoning regarding the question is as under:

It is important to note that section 234B imposes interest, which is compensatory in nature and not as a penalty (See Union Home Products Vs Union of India reported in 215-ITR-758 at Page 766). Secondly, although section 191 of the Act is not over-ridden by sections 192, 208 & 209(1)(a)(d) of the Act, the scheme of section 208 & 209 of the Act indicates that in order to compute advance tax the assessee has to interalia estimate his current income and calculate the tax on such income by applying the rates in force. That u/s 209(1)(d) the income-tax calculated is to be reduced by the amount of tax which would be deductible at source or collectible at source, which in this case has not been done by the employer company according to the law prevailing for which the assessee cannot be faulted. As stated above at the relevant time there were conflicting decisions of the Tribunal. A bonafide dispute was pending. The assessee had to estimate his current income. The words used u/s 209(1)(a) makes the Assessee estimate his current income and since a bonafide dispute was pending, imposition of interest u/s 234B was not justified without hearing

and without reasons. Accordingly, we answer this question in the affirmative i.e. in favour of the assessee and against the department.

7. For the reasons aforesaid, we answer the above mentioned question in the affirmative i.e. in favour of the assessee and against the department.

8. Appeal is disposed of accordingly. No order as to costs.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

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